



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0599, FRL-10022-46-Region 10]

Air Plan Approval; OR; Smoke Management Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Oregon State Implementation Plan (SIP) revisions submitted on November 3, 2014, and September 27, 2019. The submitted revisions incorporate by reference the most recent updates to Oregon's Smoke Management Plan. EPA is acting only on the most recent version of such regulations as the previous versions are no longer in effect as a matter of state law. EPA is also making technical corrections related to previous approvals of components of Oregon's SIP. EPA has determined that the changes are consistent with Clean Air Act requirements.

DATES: This final rule is effective [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2019-0599. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information may not be publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Randall Ruddick, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-1999, or ruddick.randall@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

- I. Background Information
- II. Response to Comments
- III. Final Action
- IV. Technical Correction
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Background Information

On February 19, 2021, EPA proposed to approve Oregon’s November 3, 2014, and September 27, 2019, SIP submissions revising the Oregon Smoke Management Plan (86 FR 10220). The reasons for our approval are included in the proposal and will not be restated here. The public comment period for our proposed approval closed on March 22, 2021. EPA received multiple comments on the proposal.

II. Response to Comments

EPA received a total of 19 comments during the public comment period. Fourteen comments expressed support for the proposed action, five comments were adverse including two comments that raised concerns EPA believes are outside the scope of the proposed action. The full text of all comments received may be found in the docket for this action. We have summarized and responded to the adverse comments.

Comments: EPA received three comments opposing EPA’s proposed action. All three comments suggested that non-burning approaches to forest management, such as chipping and recycling wood waste, should be used instead of prescribed fire to avoid the generation of smoke that can impact human health.

Response: Oregon’s SIP submission, which EPA is taking final action to approve, includes a provision that encourages the use of alternatives to burning to reduce the volume of prescribed burning necessary to meet Oregon’s management objectives. See Oregon Administrative Rule (OAR) 629-048-0200. Due to the fact that prescribed fire produces smoke that impacts air quality, Oregon's SIP submission deals centrally with the use of prescribed fire and safeguards to

ensure that such burning does not impermissibly compromise air quality. EPA has reviewed the Oregon SIP revisions and we proposed to approve the submissions as consistent with Clean Air Act (CAA) requirements.

As explained in EPA's February 19, 2021, notice of proposed rulemaking, Oregon's 2019 SIP submittal includes additional controls and contingencies to protect against impacts on air quality from prescribed burning. The submittal establishes sub-National Ambient Air Quality Standard (NAAQS) intrusion thresholds and a burn approval target not to exceed approximately 75% of the 24-hour PM_{2.5} NAAQS. The 2019 SIP submittal also establishes a NAAQS protective criterion for burn approvals through use of a one-hour threshold even though there is no NAAQS one-hour limit. Considered as a whole, the revisions contained in the 2019 submittal strengthen the currently SIP-approved smoke management requirements.

In reviewing SIP submissions, EPA's role is to approve state choices, provided those choices meet the criteria of the CAA. EPA makes a determination regarding whether the state has adequately demonstrated that its chosen control measures will not interfere with attainment and maintenance of the NAAQS and otherwise satisfy the requirements of the CAA. Here, as explained in EPA's notice of proposed rulemaking, EPA finds that Oregon has adequately demonstrated that the SIP revision related to the forest management tool of prescribed fire will continue to protect the NAAQS. Even if non-burning alternatives may accomplish the same results as burning, EPA cannot substitute non-burning alternatives that were not included in Oregon's lawfully submitted SIP revisions.

Comment: One commenter appears to support the use of prescribed fire to "limit the scope of the wildfires" but also urges EPA to work towards lowering Federal air quality standards.

Response: This comment appears to relate to the adequacy of the NAAQS and is therefore outside the scope of this action, which relates only to the approval of amendments to Oregon's SIP. The CAA contains provisions that specifically address the review and promulgation of the NAAQS. Taking into consideration the information in the Integrated Science Assessment (ISA),

Risk/Exposure Assessment (REA), Policy Assessment (PA), and the advice of Clean Air Scientific Advisory Committee (CASAC), EPA develops and publishes a notice of proposed rulemaking that communicates the Administrator's proposed decisions regarding the review of each NAAQS. A public comment period, during which public hearings are generally held, follows publication of the notice of proposed rulemaking. Taking into account comments received on the proposed rulemaking, EPA issues a final rule promulgating a new or revised NAAQS or retaining a NAAQS. EPA encourages the commenter to participate in future rulemakings when the NAAQS standards are reviewed. EPA does not revisit the adequacy of the NAAQS when taking action on a proposed SIP revision related to NAAQS pollutants and the comment is outside of the scope of this action. Rather, EPA's role in reviewing and approving a SIP revision is to ensure attainment and maintenance with the NAAQS as the relevant and applicable standard for approvals of SIP revisions under CAA section 110.

Comment: One commenter appears to support Oregon's use of prescribed fire but states "I still have a problem that is the standard of the license to be obtained before burning, how to control it more accurately and prevent the masses from abusing it?"

Response: The commenter's concerns seem to address Oregon's permitting requirements and the related implementation and possible abuse of the prescribed fire permits. The comment is vague, lacks supporting evidence or documentation, and does not identify any portions of Oregon's submittals or EPA's proposed approval that are inconsistent with CAA requirements. In approving SIPs under section 110 of the CAA, Congress gave states the lead in developing SIPs. In reviewing state plans, EPA's role is to approve state choices, provided those choices meet the criteria of the CAA. See 42 U.S.C. 7410(k) and 40 CFR 52.02(a).

Oregon submitted permitting and general air quality rules for the purpose of managing smoke from prescribed fires to EPA and requested that EPA approve the rules into the Oregon SIP. Oregon Revised Statute (ORS) 477.515 states that it is unlawful to set or cause to be set an open fire inside or within one-eighth of one mile of a forest protection district without first

securing a written permit for burning from the forester and complying with the conditions of the permit. EPA approved ORS 477.515 into the SIP on November 1, 2001, (66 FR 55105) and it is still in effect as a matter of state and Federal law.

OAR 629-047 establishes Oregon's enforcement policy regarding burning permits, including civil penalties and injunctive relief. Further, ORS 477.515(2) states that any permit obtained through willful misrepresentation is void. In the event that burn permits are not properly obtained, or are abused in some other way, Oregon's laws, rules, and enforcement authorities are sufficient to implement and enforce the SIP-approved regulations, consistent with CAA section 110(a)(2)(C). EPA separately approved Oregon's SIP as meeting the enforcement requirements of section 110 on June 6, 2019 (84 FR 26347). When we approve the State's revisions into the SIP, the provisions are considered federally enforceable.

For the aforementioned reasons, EPA is finalizing the action as proposed.

III. Final Action

Under CAA section 110(k), EPA is approving and incorporating by reference, where appropriate, Oregon's 2014 and 2019 submitted revisions into the Oregon SIP at 40 CFR part 52, subpart MM as discussed in our February 19, 2021, proposed approval (86 FR 10220). Once this approval becomes effective, the Oregon SIP will include the following regulations:

- OAR 629-048-0001, Title, Scope and Effective Dates (state effective 3/1/2019);
- OAR 629-048-0005, Definitions (state effective 3/1/2019);
- OAR 629-048-0010, Purpose (state effective 3/1/2019);
- OAR 629-048-0020, Necessity of Prescribed Burning (state effective 3/1/2019);
- OAR 629-048-0021, Necessity of Safeguarding Public Health (state effective 3/1/2019);
- OAR 629-048-0100, Regulated Areas (state effective 1/1/2008);
- OAR 629-048-0110, Characterization and Response to Smoke Incidents, Smoke Intrusions, and National Ambient Air Quality Standards (NAAQS) Exceedances (state effective 3/1/2019);

- OAR 629-048-0120, Air Quality Maintenance Objectives (state effective 3/1/2019);
- OAR 629-048-0130, Visibility Objectives (state effective 7/11/2014);
- OAR 629-048-0135, Special Protection Zone Requirements (state effective 3/1/2019);
- OAR 629-048-0137, SPZ Contingency Plan Requirements (state effective 3/1/2019);
- OAR 629-048-0140, Smoke Sensitive Receptor Areas (state effective 3/1/2019);
- OAR 629-048-0150, Criteria for Future Listing of Smoke Sensitive Receptor Areas (state effective 3/1/2019);
- OAR 629-048-0160, Bear Creek/Rogue River Valley SSRA (state effective 1/1/2008);
- OAR 629-048-0180, Communication, Community Response Plans, and Exemption Requests (state effective 3/1/2019);
- OAR 629-048-0200, Regulated Areas (state effective 3/1/2019);
- OAR 629-048-0210, Best Burn Practices; Emission Reduction Techniques (state effective 3/1/2019);
- OAR 629-048-0220, Forecast Procedures (state effective 3/1/2019);
- OAR 629-048-0230, Burn Procedures (state effective 3/1/2019);
- OAR 629-048-0300, Registration of Intent to Burn (state effective 1/1/2008);
- OAR 629-048-0310, Fees for Prescribed burning (state effective 3/1/2019);
- OAR 629-048-0320, Reporting of Accomplishments (state effective 3/1/2019);
- OAR 629-048-0330, Emission Inventories (state effective 1/1/2008);
- OAR 629-048-0400, Coordination with Other Regulating Jurisdictions and for Other Pollutants (state effective 1/1/2008);
- OAR 629-048-0450, Periodic Evaluation and Adaptive Management (state effective 3/1/2019);
- OAR 629-048-0500, Enforcement (state effective 3/1/2019);
- ORS 477.013, Smoke Management Plan; rules (state effective 3/1/2019); and

- Oregon Department of Forestry Directive 1-4-1-601, Operational Guidance for the Oregon Smoke Management Program (state effective 3/1/2019).

IV. Technical Correction

EPA is making technical corrections as discussed in our February 19, 2021, proposed approval (86 FR 10220). We are correcting the identification of the Oregon SIP at 40 CFR 52.1970(c), Table 2 by removing OAR 629-043-0043, Smoke Management Plan (state effective 4/13/1987) to reflect EPA's August 22, 2012, approval (77 FR 50611) of OAR 629-048; and by adding:

- OAR 629-048-0100, Regulated Areas (state effective 1/1/2008);
- OAR 629-048-0160, Bear Creek/Rogue River Valley SSRA (state effective 1/1/2008);
- OAR 629-048-0300, Registration of Intent to Burn (state effective 1/1/2008);
- OAR 629-048-0330, Emission Inventories (state effective 1/1/2008);
- OAR 629-048-0400, Coordination with Other Regulating Jurisdictions and for Other Pollutants (state effective 1/1/2008).

We are also making technical corrections to the Oregon SIP at 40 CFR 52.1970(e), Table 5, Section 3, by revising the reference to Oregon's Smoke Management Plan Administrative Rule to reflect EPA's August 22, 2012, approval (77 FR 50611) of OAR 629-048 and by removing the reference to OAR 629-43-043.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of Oregon Administrative Rules as discussed in sections III and IV of this document and described in the amendments to 40 CFR part 52 set forth below. These materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP

compilation.¹

Also, in this rule, we are removing the incorporation by reference of Oregon Administrative Rules as discussed in section IV of this document and described in the amendments to 40 CFR part 52 set forth below.

EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided those choices meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

¹ 62 FR 27968 (May 22, 1997).

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter.

Dated: May 19, 2021.

Michelle L. Pirzadeh,
Acting Regional Administrator,
Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Amend § 52.1970:

a. In paragraph (c), amend table 2 by revising the section entitled “Chapter 629—Oregon Department of Forestry”; and

b. In paragraph (e):

i. Amend table 1 by adding an entry for “ORS Chapter 477.013” at the end of the table; and

ii. Amend table 5:

A.. Under the heading “Section 3—Statewide Regulatory Provisions”, by revising the entry for “Smoke Management Plan Administrative Rule”; and

B. Under the heading “EPA-Approved Oregon State Directives”, by removing the entry for “Directive 1-4-1-601”, and adding an entry for “Oregon Department of Forestry Directive 1-4-1-601” in its place.

The revisions and additions read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR)¹

State citation	Title/subject	State effective date	EPA Approval date	Explanations
	* * *	* * *	* * *	

Chapter 629—Oregon Department of Forestry				
629-24-301	Maintenance of Productivity and Related Values	8/1/1987	11/1/2001, 66 FR 55105	Statewide Visibility Plan.
629-048-0001	Title, Scope and Effective Dates	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation],	
629-048-0005	Definitions	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0010	Purpose	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0020	Necessity of Prescribed Burning	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0021	Necessity of Safeguarding Public Health	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0100	Regulated Areas	1/1/2008	8/22/2012, 77 FR 50611	
629-048-0110	Characterization and Response to Smoke Incidents, Smoke Intrusions, and National Ambient Air Quality Standards (NAAQS) Exceedances	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0120	Air Quality Maintenance Objectives	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0130	Visibility Objectives	7/11/2014	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	

629-048-0135	Special Protection Zone Requirements	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0137	SPZ Contingency Plan Requirements	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0140	Smoke Sensitive Receptor Areas	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0150	Criteria for Future Listing of Smoke Sensitive Receptor Areas	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0160	Bear Creek/Rogue River Valley SSRA	1/1/2008	8/22/2012, 77 FR 50611	
629-048-0180	Communication, Community Response Plans, and Exemption Requests	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0200	Regulated Areas	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0210	Best Burn Practices; Emission Reduction Techniques	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0220	Forecast Procedures	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0230	Burn Procedures	3/1/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
629-048-0300	Registration of Intent to Burn	1/1/2008	8/22/2012, 77 FR 50611	
629-048-0310	Fees for Prescribed burning	3/1/2019	[Insert date of publication in the	

			Federal Register], [Insert Federal Register citation]	
629-048-0320	Reporting of Accomplishments	3/1/2019	Insert date of publication in the Federal Register], [Insert Federal Register citation]	
629-048-0330	Emission Inventories	1/1/2008	8/22/2012, 77 FR 50611	
629-048-0400	Coordination with Other Regulating Jurisdictions and for Other Pollutants	1/1/2008	8/22/2012, 77 FR 50611	
629-048-0450	Periodic Evaluation and Adaptive Management	3/1/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
629-048-0500	Enforcement	3/1/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				

¹ The EPA approves the requirements in Table 2 of this paragraph (c) only to the extent they apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

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(e) * *

TABLE 1—OREGON STATE STATUTES APPROVED BUT NOT INCORPORATED BY REFERENCE

State citation	Title/subject	State effective date	EPA approval date	Explanations
* * * * *				
ORS Chapter 477.013	Smoke Management Plan; rules	3/1/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

* * * *

**TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT
INCORPORATED BY REFERENCE**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	*
Section 3—Statewide Regulatory Provisions				
*	*	*	*	*
Smoke Manageme nt Plan Administrat ive Rule	Statewide	1/1/2008, 11/3/2014, 9/27/2019.	8/22/2012, 77 FR 50611 [Insert date of publication in the Federal Register], [Insert Federal Register citation].	Refer to section (c) for approved regulations incorporated by reference.
*	*	*	*	*
EPA-Approved Oregon State Directives				
Oregon Department of Forestry Directive 1- 4-1-601	Operational Guidance for the Oregon Smoke Management Program	9/27/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
*	*	*	*	*

[FR Doc. 2021-11038 Filed: 5/24/2021 8:45 am; Publication Date: 5/25/2021]